

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

DR. JACK F. TRACY, II,

Plaintiff,

vs.

SAFECO INSURANCE COMPANY  
of AMERICA,

Defendant.

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NO. CIV-13-0172-HE

**ORDER**

Plaintiff Dr. Jack F. Tracy, II filed this action against his insurer, Safeco Insurance Company of America (“Safeco”), in state court, alleging claims for breach of contract and bad faith. Safeco removed the action on the basis of diversity jurisdiction and plaintiff filed a motion to remand, asserting that the amount in controversy requirement was not met. Plaintiff’s motion was denied, as the court concluded plaintiff’s claimed damages exceeded the jurisdictional minimum and the action had been properly removed.

Plaintiff has now filed a motion seeking leave to amend the complaint to add a demand for a jury trial and to clarify his request for attorney’s fees and costs and his bad faith claim. Alternatively, plaintiff asks the court to grant his motion to dismiss the case without prejudice so that it may be refiled in state court “with a lower claim for damages,” which the court assumes is an amount less than \$75,000. The court notes that plaintiff’s prayer for relief in his proposed amended complaint is \$74,999, plus attorney’s fees.

Plaintiff states in his motion that defendant objects to his requests for a jury trial and to amend his pleadings. Defendant did not, though, respond to plaintiff’s motion and thereby


confessed it. LCvR. 7.1(g).

In the absence of an objection from defendant, the limited amount of claimed actual damages and the fact that the case is still in the discovery stage, the court concludes plaintiff's motion should be granted and the action should be dismissed. Plaintiff is cautioned, however, that attorney's fees and punitive damages can be considered in determining the amount in controversy and, thus, whether the jurisdictional amount requirement is satisfied.

Accordingly, plaintiff's motion [Doc. #15] is **GRANTED** and this action is **DISMISSED WITHOUT PREJUDICE**.

**IT IS SO ORDERED.**

Dated this 1st day of August, 2013.

  
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JOE HEATON  
UNITED STATES DISTRICT JUDGE